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BY ECF FILING AND HAND DELIVERY

Honorable Loretta A. Preska, U.S.D.J.
United States District Court
for the Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: 347 Townhouse, LLC v. Citibank, N.A., Case No. 19-cv-00542 (LAP)

Dear Judge Preska:

We represent Plaintiff in the above-referenced action. As indicated in our October 4 letter (Dkt. 33), we write pursuant to Section II.A of Your Honor's *Individual Practices* to request a pre-motion conference to file a motion for leave to file an amended complaint pursuant to FED. R. CIV. P. 15(a). Plaintiff seeks to file an amended complaint to add a claim for breach of contract, a claim that was recently sustained over a motion to dismiss in *Hymes v. Bank of Am., N.A.*, No. 18-cv-2352 (RRM), 18-cv-4157 (RRM), 2019 U.S. Dist. LEXIS 172107 (E.D.N.Y. Sept. 30, 2019), a case that presents the same legal issues as this action.¹ A copy of Plaintiff's proposed amended complaint is annexed hereto as **Exhibit A**. Plaintiff has requested the consent of Defendant to file the proposed amended complaint and is awaiting its response.

Plaintiff seeks to amend its initial *Complaint* at the early stages of this case, before Defendant has filed a responsive pleading and prior to the commencement of discovery or a decision on the pending motion to dismiss Plaintiff's *Complaint*. As demonstrated by the *Hymes* decision, Plaintiff's proposed new claim for breach of contract is meritorious, *see Aetna Cas. & Sur. Co. v. Aniero Concrete Co.*, 404 F.3d 566, 604 (2d Cir. 2005), and leave to amend is being diligently requested following the *Hymes* decision.² Plaintiff believes it serves the interests of judicial

¹ As summarized in Plaintiff's October 4 letter, the *Hymes* court decided that New York General Obligations Law §5-601, and other state laws requiring national banks to pay interest on mortgage escrow accounts, were not preempted by the National Bank Act or federal banking regulations. In *Hymes*, Judge Mauskopf denied the motion to dismiss the plaintiffs' claims for breach of contract.

² In addition to adding a claims for breach of contract, the proposed amended complaint pleads a few new facts learned since Plaintiff filed its initial *Complaint*, including those facts disclosed in Plaintiff's June 21, 2019 letter to this

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efficiency to add the claim for breach of contract before the Court decides any motion to dismiss, instead of having the Court decide the pending motion and then having to subsequently consider an additional claim for breach of contract. Because this case is in its early stages, before any orders resolving dispositive motions and before discovery has commenced, Defendant will not be prejudiced by the filing of an amended complaint. See *Maiaro v. Alarm Specialists, Inc.*, No. 13-cv-08658 (NSR), 2014 U.S. Dist. LEXIS 147545, at *13 (S.D.N.Y. Oct. 15, 2014); *Chang v. Phx. Satellite TV (US), Inc.*, No. 14-CV-2686 (PKC), 2014 U.S. Dist. LEXIS 136535, at *22 (S.D.N.Y. Sep. 19, 2014); *TBC Consoles, Inc. v. Forecast Consoles, Inc.*, 2009 U.S. Dist. LEXIS 66366, at *11 (S.D.N.Y. July 27, 2009).

Given the liberal federal amendment policies, see *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC*, 797 F.3d 160, 190 (2d Cir. 2015); *Kaster v. Modification Sys., Inc.*, 731 F.2d 1014, 1018 (2d Cir. 1984), the merits of Plaintiff's proposed new claim, the lack of prejudice to Defendant and the efficiencies served by an early amendment, Plaintiff respectfully requests that the Court order a pre-motion conference to address Plaintiff's motion to file the proposed, annexed *First Amended Class Action Complaint*.

Respectfully yours,



Joseph S. Tusa

**GISKAN SOLOTAROFF
& ANDERSON P.C.**

Oren Giskan
Michael Jaffe

cc: Counsel of Record (by ECF Filing)

Court (Dkt. 31). The proposed amendment also includes some ministerial revisions and additions to existing claims and allegations. If requested, Plaintiff will provide the Court with black-line comparison of the original *Complaint* with the proposed amended complaint.